Petition

81-1952

Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

PHILLIP ROWE,
Petitioner

versus

THE UNITED STATES,
Respondent

On Certiorari to
The United States Court of Claims
Washington, D. C.

PETITION FOR CERTIORARI

PHILLIP ROWE
Div. of Tropical Research
Tela Railroad Company
La Lima, Honduras
Central America
Phone: 56-2078
PETITIONER APPEARING PRO SE

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Constitution limits the taxing power of Congress by the requirement that this power be exercised to provide for the general welfare of the United States?

2. Whether undisputed evidence that a taxation which places Americans at a competitive disadvantage against non-Americans creates debts for the United States and violates the intents of the Constitution listed in the preamble is sufficient showing that this taxation is harmful to the general welfare of the United States?

3. Whether Mapes v. United States, 217 Ct. Cl. 115, 130, 576 F. 2d 896, 904 (1978) and McCray v. United States, 195 U. S. 27, 59 (1904) prevent judicial examination of evidence concerning violations of the limitation of congressional taxing power as stated in United States v. Butler, 297 U. S. 1, 65-66 (1936)?

4. Whether undisputed evidence that there is no conflict between the constitutional taxing power granted to Congress and a claim under the Ninth Amendment of the Constitution of the right of Americans to compete for employment overseas on an equal basis with non-Americans invalidates United Public Workers v. Mitchell, 330 U. S. 75, 95-96 (1947) as a basis for denying this right?

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NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

PHILLIP ROWE,
Petitioner,

versus

THE UNITED STATES,
Respondent.

On Writ of Certiorari to
The United States Court of Claims
Washington, D. C.

PETITION FOR CERTIORARI

Petitioner, PHILLIP ROWE, respectfully prays that a writ of certiorari issue to review the order and opinion of the United States Court of Claims, Washington, D. C., entered on October 30, 1981.

OPINION BELOW

The order and opinion of the Court of Claims are reported as Case No. 522-79T. A copy of the opinion is attached as Appendix A.

JURISDICTION

The order and opinion of the Court of Claims in this case were entered on October 30, 1981. (See Appendix A). The Petitioner filed a Petition for Relief from Order which was denied by the Court of Claims on January 29, 1982. A copy of the order denying the Petition for Relief from Order is attached as Appendix B. This Court has jurisdicton pursuant to Rules 17 and 19 of the Rules of the Supreme Court of the United States. The statuatory provision believed to confer jurisdiction on this Court is 28 U.S.C., Section 1254 (1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Preamble, United States Constitution:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

2. Article I, Section 8, Clause 1, United States Constitution:

The Congress shall have power to lay and collect taxes . . . to pay the debts and provide for the common defense and general welfare of the United States . . .

3. Article III, Section 2, Clause 1, United States Constitution:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and . . . to controversies to which the United States shall be a party;. . .

4. The Ninth Amendment, United States Constitution:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage other others retained by the people.

5. The Sixteenth Amendment, United States Constitution

The Congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

6. Internal Revenue Code of 1954 (26 U.S.C.)

As Amended to Include the Provisions of the For-

eign Earned Income Act of 1978 (Pub. Law No. 95-615, 92 Stat. 3097, 95th Cong., 2d Sess., 1978) (See Appendix C).

7. Federal Rules of Evidence, Rule 201 (b), (f):

b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute. . . or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

f) Time of taking notice. Judicial notice may be taken at any stage of the proceedings.

STATEMENT OF THE CASE

Petitioner Phillip Rowe is an United States citizen who works for an U.S. firm in Honduras. This case involves a claim by petitioner for a refund of taxes paid to the Internal Revenue Service on his foreign-earned income for the 1978 tax year on the ground that the tax statute under which these taxes were levied, the Foreign Earned Income Act of 1978[1] (FEIA), is unconstitutional. Petitioner further contends that Americans can claim, under the Ninth Amendment of the Constitution, the right to compete for employment overseas on an aqual basis with non-Americans. (Petitioner's Motion for Summary Judgment).

Undisputed evidence concerning U.S. taxation of foreign-earned income was presented to show that: (1)

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1 Pub. Law No. 95-615, 92 Stat. 3097, 95th Cong., 2d. Sess. (1978).

the United States is the only major industrialized country which taxes the foreign-earned income of its citizens in private employment abroad; (2) this taxation places Americans employed overseas or seeking foreign employment at a competitive disadvantage against non-Americans; (3) application of the Foreign Earned Income Act of 1978 creates more debts for the United States than it raises revenue to pay; (4) the adverse consequences of a taxation which places Americans at a competitive disadvantage against non-Amercians are in direct violation of the objectives of the Constitution as outlined in the preamble; (5) since each of the intents of the Constitution (to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity) listed in the preamble deals with a different aspect of the general welfare, showings that a taxation is in violation of these intents of the Constitution provide for confirmation in definite terms that this taxation is harmful to the general welfare of the United States; (6) by being harmful to the general welfare, this taxation is in conflict with the requirement that congressional taxing power be exercised to provide for the general welfare of the United States as outlined in Article I, Section 8, Clause 1 of the Constitution and upheld by the Supreme Court in United States v. Butler, 297 U.S. 1, 65-66 (1936). (Petitioner's Motion for Relief from Order and Brief in Support Thereof).

Undisputed arguments in regard to equity were presented to show that: (1) allowing expatriate Ameri-

cans to compete on an equal basis with non-Americans would not be an injustice to domestic Americans since there are no restrictions on which Americans can work overseas; (2) a taxation which places expatriate Americans at a competitive disadvantage against non-Americans is unjust to all Americans due to the debts created and other harmful effects to the general welfare of the United States; (3) there is no conflict between the taxing power granted to Congress and a claim under the Ninth Amendment of the Constitution of the right of Americans to compete for employment overseas on an equal basis with non-Americans. (Petitioner's Motion for Relief from Order and Brief in Support Thereof, and Petitioner's Reply to Defendant's Response to Plaintiff's Motion for Relief from Order).

Instead of refuting or offering counter evidence to petitioner's arguments that the taxation in question is unconstitutional by reason of being harmful to the general welfare of the United States, respondent argued that the Foreign Earned Income Act of 1978 is not unconstitutional by reason of being unwise, onerous and oppressive. (Respondent's Cross-Motion of the United States for Summary Judgment and Brief in Support Thereof).

The Court of Claims issued an order on October 30, 1981, dismissing the petition without oral argument. The Court ruled that petitioner had failed to state a claim upon which relief can be granted. Despite the fact that petitioner had made no claim regarding the wisdom of the tax statute in question, the basis for the

Court's order to dismiss was that arguments about the wisdom of congressional policy are not within judicial competence.

The Court order further denied petitioner's claim under the Ninth Amendment of the Constitution of the right of Americans to compete on equal terms with non-Americans for overseas jobs.

Petitioner filed a motion and brief for relief from order on November 27, 1981. In this brief, petitioner reiterated that the Court was not requested to inquire into the wisdom of congressional policy, but to consider the assertion and evidence that Congress–by enacting a tax law which is harmful to the general welfare of the United States–breached the authority conferred on it by the Constitution.

Due to a mistake by petitioner, the exhibits supporting his arguments were not certified in earlier motions to the Court. The exhibits in his motion and brief for relief from order were certified. This evidence was in compliance with the Federal Rules of Evidence, Rule 201 (b) and (f). Respondent, in its response to petitioner's motion for relief from order, still did not dispute petitioner's evidence that the tax statute in question is harmful to the general welfare of the United States and therefore unconstitutional.

The Court of Claims issued an order on January 29, 1982, denying petitioner's motion for relief from order. Thus, the Court of Claims allowed its order to

dismiss the petition to stand, in spite of petitioner's showing that the tax statute in question is in violation of a constitutional requirement, and in spite of respondent's continued refusal to dispute petitioner's evidence in support of this showing.

REASONS FOR GRANTING THE WRIT

I. The Court Of Claims Departed From Constitutional Directive By Refusing To Review Undisputed Evidence That Tax Statutes Which Place Americans At A Competitive Disadvantage Against Non-Americans Are In Violation Of A Requirement Established By The Constitution And Upheld By The Supreme Court.

Article I, Section 8, Clause 1 of the Constitution reads:

"The Congress shall have power to lay and collect taxes . . . to pay the debts and provide for the common defense and general welfare of the United States . . ."

This description of congressional taxing power implicitly states that if a taxation is harmful to the general welfare, then Congress does not have the power to enact the taxation.

The Supreme Court upheld this interpretation in its ruling that the power of Congress to tax is "limited only by the requirement that it shall be exercised to provide for the general welfare of the United States".

United States v. Butler, 297 U.S. 1, 65-66 (1936).

The Sixteenth Amendment of the Constitution does not alter this requirement of a taxation. The purpose of this Amendment has been construed solely to remove income taxes from the constitutional restrictions that direct taxes be apportioned among the states. Brushaber v. Union Pacific R.R., 240 U.S. 1, 17-18 (1915).

If a requirement of taxations is established by the Constitution and upheld by the Supreme Court, evidence that this lawful requirement has been violated is entitled to judicial review as outlined in Article III, Section 2, Clause 1 of the Constitution:

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and . . . to controversies to which the United States shall be a party; . . ."

The Court of Claims refused to review the undisputed evidence presented by petitioner to show that the taxation in question which places Americans at a competitive disadvantage against non-Americans is harmful to the general welfare, and therefore is in violation of the requirement that taxations can be enacted only to provide for the general welfare of the United States. (Petioner's Motion for Relief from Order and Brief in Support Thereof). This Court should grant this petition in order to review this case and set forth guidelines for lower courts that undisputed evidence that

statutes are in conflict with requirements established by the Constitution and upheld by the Supreme Court cannot be disregarded without judicial review.

II. The Court Of Claims, By Basing Its Order To Dismiss The Petition On Inapplicable Cases, Decided A Federal Question In A Way In Conflict With An Applicable Decision Of The Supreme Court.

The Supreme Court's decision in United States v. Butler, 297 U.S. 1, 65-66 (1936) that the power of Congress to tax is limited "by the requirement that it shall be exercised to provide for the general welfare of the United States" implicitly provides that a showing that taxations are in violation of this requirement cannot be denied. To deny this showing is equivalent to eliminating this requirement and to nullifying this Supreme Court ruling. The Court of Claims correctly stated that the courts may not rule on the wisdom of legislative enactments made under a granted power. However, the enactment of taxations which are harmful to the general welfare is not within the powers granted to Congress. By disregarding this limitation of congressional taxing power in its dismissal of the petition, the Court of Claims decided a federal question in a way in conflict with an applicable decision of the Supreme Court.

In support of its refusal to review petitioner's undisputed evidence that the taxation in question is harmful to the general welfare, the Court of Claims ci-

ted Mapes v. United States, 217 Ct. Cl. 115, 130, 576 F. 2d 896, 904 (1978) ("We in the judiciary are neither equipped nor inclined to second guess the legislature in its determination of appropriate tax policies.") and McCray v. United States, 195 U.S. 27, 59 (1904) ("if a tax be within the lawful power, the exertion of that power may not be judicially restrained because of the results to arise from its exercise") to show that courts may not pass on the wisdom of legislative enactments.

Since the issue is one regarding the violation of a constitutional requirement of taxations, and not one concerning the wisdom of congressional policy, Mapes is not applicable as a basis for dismissing petitioner's claim. The critical consideration in McCray is that the enactment of taxations which are harmful to the general welfare of the United States is not within the lawful power of Congress. Thus, Mapes and McCray do not prevent judicial examination of evidence regarding violations of the Supreme Court ruling in United States v. Butler, 297 U.S. 1, 65-66 (1936) that the power of Congress to tax is limited "by the requirement that it shall be exercised to provide for the general welfare of the United States."

This Court should grant this petition to review the case and hold that cases which do not pertain to the issue are not acceptable as a basis for the refusal by the Court of Claims to review petitioner's undisputed evidence that the taxation in question is in conflict with an applicable decision of the Supreme Court.

III. The Court Of Claims Departed From Accepted Judicial Procedure By Refusing To Review Evidence That Americans Can Claim The Right To Compete For Employment Overseas On An Equal Basis With Non-Americans.

The Ninth Amendment of the Constitution reads:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

The Court of Claims, in its denial of petitioner's claim under the Ninth Amendment of the right of Americans to compete for employment overseas on an equal basis with non-Americans, stated that no such right exists and cited United Public Workers v. Mitchell, 330 U.S. 75, 95-96 (1947). Mitchell states that the Ninth Amendment is not an independent source of specific substantive rights if the claimed right is in conflict with a constitutional power granted to the Federal Government.

Petitioner's undisputed evidence shows that tax statutes which deny this right to compete on an equal basis, by subjecting Americans to taxations which do not apply to non-Americans doing the same job in the same place for the same employer, are harmful to the general welfare of the United States. (Petitioner's Motion for Relief from Order and Brief in Support Thereof). Since taxations which are harmful to the general welfare of the United States are not within the taxing

power which is granted to Congress, there is no conflict between the claim of this right to compete and the constitutional taxing power of the Federal Government. Thus, Mitchell is not a valid basis for denying this claim.

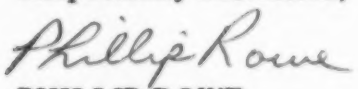
This Court should grant this petition to review the evidence that there is no conflict between the taxing power granted to Congress and a claim by Americans of the right to compete for employment overseas on an equal basis with non-Americans. Due to the nature of this claim, a ruling granting this right under the Ninth Amendment would be expected to stipulate that this right applies only in regard to taxation of foreign-earned income, and should not be construed to confer this right if for other reasons Americans are prohibited from working in certain places. Also, since the claim is to compete for employment, a granting of this right would not prohibit Congress from setting limits on amounts of foreign-earned income excludable from U. S. taxation to prevent abuses by high income persons. The only restriction which the granting of this right would place on Congress is that the amount of foreign-earned income excludable from U.S. taxation be sufficient to allow Americans to effectively compete against non-Americans for overseas employment.

CONCLUSION

For the foregoing reasons, Petitioner Phillip Rowe respectfully submits that his petition for writ of certiorari should be granted in order for this Court to re-

view the order and opinion of the United States Court of Claims, Washington, D. C.

Respectfully submitted,



PHILLIP ROWE
Div. of Tropical Research
Tela Railroad Company
La Lima, Honduras
Central America
Phone: 56-2078.

PETITIONER APPEARING PRO SE

AFFIDAVIT OF SERVICE

I do hereby swear that three true and correct copies of the foregoing instrument have been served on the Solicitor General, Department of Justice, Washington, D. C. 20530; one true and correct copy on Ms. Ellen C. Specker, attorney of record for respondent, Department of Justice, Washington, D. C. 20530; one true and correct copy on Mr. John F. Murray, Acting Assistant Attorney General for respondent; and one true and correct copy on Mr. Theodore D. Peyser, of counsel for respondent, Department of Justice, Washington, D. C. 20530, by United States Mail, postage pre-paid, on the 19TH day of APRIL, 1982.

Phillip Rowe
PHILLIP ROWE

REPUBLIC OF HONDURAS
CENTRAL DISTRICT
CITY OF TEGUCIGALPA
EMBASSY OF THE UNITED
STATES OF AMERICA } ss.

Subscribed and sworn to before me this 19TH day of APRIL, 1982.

George A. Flowers Jr.
George A. Flowers, Jr.
Vice Consul of the United
States of America

Appendix

APPENDIX A

IN THE UNITED STATES COURT OF CLAIMS
No. 522-79T

PHILLIP ROWE

versus

THE UNITED STATES

Oct. 30, 1981

Phillip Rowe, pro se.
Ellen C. Specker, with whom was
Acting Assistant Attorney General John F. Murray,
for defendant. Theodore D. Peyser, of counsel.

Before FRIEDMAN, Chief Judge, KUNZIG and SMITH, Judges.

ORDER

PER CURIAM: Plaintiff in this case, Phillip Rowe, appearing pro se, claims a refund for taxes paid to and withheld by the Internal Revenue Service on the ground that the taxing statute under which they were levied, the Foreign Earned Income Act. of 1978[1] (FEIA), is unconstitutional.

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1 Pub. L. No. 95-615, 92 Stat. 3097, 95th Cong., 2d Sess. (1978).

After careful consideration of the parties' submissions, and without oral argument, we dismiss the petition for failure to state a claim upon which relief can be granted.[2]

Effective January 1, 1978, the FEIA replaced the prior tax treatment (I.R.C. S. 911) of Americans working overseas, resulting in greater tax liability for some of such persons. On his 1978 tax return, plaintiff calculated a tax due of zero, based on the then-repealed section 911, because he felt that the FEIA was unconstitutional. The IRS did not accept this treatment, recomputed the tax as an arithmetical adjustment, and assessed plaintiff for the tax, less amounts withheld, plus penalty for late payment and interest. Plaintiff made payment of the $3,489.67, for which, plus $800 withheld, he sues in this Court.

1. The Preamble.—Plaintiff asserts that the FEIA makes life more expensive for Americans working abroad, thus discouraging them from doing so. Putting Americans at a competitive disadvantage to non-Americans doing the same overseas job does not "establish justice"; the lack of Americans working overseas is detrimental to "the common defense"; it exacerbates the

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2 We cannot understand why the Government treated the case on the merits from the outset. A motion to dismiss for failure to state a claim upon which relief can be granted, under Rule 38, would have been appropriate, given the nature of plaintiff's claims, and would have saved both the parties and the court considerable time and effort.

national balance of trade deficit which does not "promote the general welfare"; and the burden of the tax on plaintiff fails to "secure (to him) the blessings of liberty".

It is emphatically the province of the legislative branch to say what most benefits the common weal in such areas as the general welfare and the common defense. The courts may not pass on the wisdom of legislative enactments.[3] The preamble also provides no manageable standards for judging whether a law conforms to its provisions. The preamble does not create a cause of action.

2. Article I, Section 8.—Plaintiff further contends that the income tax provided for by the sixteenth amendment is limited as to its purposes by the original grant to Congress of the taxing power in article I, section 8, clause 1 of the Constitution, which in turn limits the purpose of taxation to the payment of debts and provision for the common defense and general welfare. Because the FEIA has all of the deleterious effects enumerated above, plaintiff asserts, it exceeds this authority. How this clause can be read

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3 *Mapes v. United States*, 217 Ct. Cl. 115, 130, 576 F. 2d 896, 904(1978) ("We in the judiciary, are neither equipped nor inclined to second guess the legislature in its determination of appropriate tax policies."); *McCray v. United States*, 195 U.S. 27,59 (1904) ("if a tax be within the lawful power, the exertion of that power may not be juicially restrained because of the results to arise from its exercise").

to limit the purposes of taxation, so long as they are within the enumerated powers of Congress, is altogether mysterious. Its terms broadly cover every aspect of governmental activity. Even if it were seen to limit the taxing power, however, it does so "only by the requirement that it shall be exercised to provide for the general welfare of the United States"[4] which, as we stated above, provides no criteria—other than the forbidden one of wisdom of legislative policy—by which a court can judge the FEIA.

3. Article I, Section 9—Article I, section 9, clause 5 states that "No Tax or Duty shall be laid on Articles exported from any State." Plaintiff claims that he is such an article, exported from Arkansas apparently, and that congressional taxation of him is unconstitutional. Putting aside the obvious inapplicability of this provision to plaintiff, such a rule would immunize all Americans working in foreign places from taxation. This bizarre result was certainly not in the contemplation of the Framers.

4. The Ninth Amendment.—Plaintiff asserts that the ninth amendment's reservation of unenumerated

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4 *United States* v. *Butler*, 297 U.S. 1, 65-66 (1936). *Butler* actually struck down the Agricultural Adjustment Act on this and other grounds, but its attempt to give definite meaning to this clause resulted in no more conclusive a formulation than the words just quoted. *Cf. West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937) (courts should give great deference to legislative action in economic policy).

rights to the people protects from encroachment by the FEIA his right to compete on equal terms with non-Americans for overseas jobs with overseas employers. Simply stated, no such right exists. Besides, the ninth amendment, like the preamble, has not been read as an independent source of specific substantive rights or duties.[5]

Plaintiff's submissions although in several respects not in compliance with the rules of this court, presented a thorough, competently argued, and often well-documented exposition of what are in his opinion the defects of the FEIA. However, arguments about the wisdom of congressional policy are not within the judicial competence; they would more appropriately be addressed to the Congress.

Plaintiff has stated no claim upon which this court can grant relief.

Accordingly, plaintiff's motion for summary judgement is denied; defendant's cross-motion for summary judgement is granted; and the petition is dismissed.

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5 See *United Public Workers* v. *Mitchell*, 330 US. 75, 95-96 (1947).

APPENDIX B

IN THE UNITED STATES COURT OF CLAIMS

January 29, 1982

ORDER

PER CURIAM: IT IS ORDERED that the motions of the parties as set forth, for rehearing, reconsideration or other relief under Rules 7(d), 151 and 152 are DENIED:

522-79T- **PHILLIP ROWE**

Plaintiff's motion filed November 27, 1981, for relief from order of October 30, 1981. (FRIEDMAN, Chief Judge, KUNZIG & SMITH, Judges).

APPENDIX C

Pertinent Text of the Internal Revenue Code of 1954 (26 U.S.C.) as Amended to Include the Provisións of the Foreign Earned Income Act of 1978 (Pub. Law No. 95-615, 92 Stat. 3097, 95th Cong., 2d Sess., 1978):

SEC. 911. INCOME EARNED BY INDIVIDUALS IN CERTAIN CAMPS.

(a) General Rule.—In the case of an individual described in section 913(a) who, because of his employment, resides in a camp located in a hardship area, the following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Bona Fide Resident of Foreign Country.—If such individual is described in section 913(a)(1), amounts received from sources within a foreign country or countries (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during the period of bona fide residence. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

(2) Presence in Foreign Country for 17 Months.—If such individual is described in section 913(a)(2), amounts received from sources within qualified foreign countries (except amounts paid

by the United States or any agency thereof) which constitute earned income attributable to services performed during the 18-month period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

An individual shall not be allowed as a deduction from his gross income or as a credit against the tax imposed by this chapter any credit for the amount of taxes paid or accrued to a foreign country or possession of the United States, to the extent that such deduction or credit is properly allocable to or chargeable against amounts excluded from gross income under this subsection, other than the deduction allowed by section 217 (relating to moving expenses).

(b) **Definition of Earned Income.**– . . .the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered . . .

(c) **Special Rules.**–For purposes of computing the amount excludable under subsection (a), the following rules shall apply:

(1) **Limitations on Amount of Exclusion.**–

(A) **In General.**–The amount excluded from the gross income of an individual under subsection (a) for any taxable year shall not exceed an amount which shall be computed on a daily basis at an annual rate of

$20,000 for days during which he resides in a camp.

(B) Camp.—For purposes of this section, an individual shall not be considered to reside in a camp because of his employment unless the camp constitutes substandard lodging which is –

(i) Provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market.

(ii) located, as near as practicable, in the vecinity of the place at which such individual renders services, and

(iii) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(C) Hardship Area.—For purposes of this section, the term "hardship area" has the same meaning as in section 913(h) . . .

SEC. 913. DEDUCTION FOR CERTAIN EXPENSES OF LIVING ABROAD.

(a) Allowance of Deduction.—In the case of an individual who is—

(1) Bona Fide Resident of Foreign Country.—A citizen of the United States and who establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country

or countries for an uninterrupted period which includes an entire taxable year, or

(2) **Presence in Foreign Country for 17 Months.**—A citizen or resident of the United States and who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period,

there shall be allowed as a deduction for such taxable year or for any taxable year which contains part of such period, the sum of the amounts set forth in subsection (b).

(b) **Amounts.**—The amounts referred to in this subsection are:

(1) The qualified cost-of-living differential.
(2) The qualified housing expenses.
(3) The qualified schooling expenses.
(4) The qualified home leave travel expenses.
(5) The qualified hardship area deduction.

(c) **Deduction Not to Exceed Net Foreign Source Earned Income . . .**

(d) **Qualified Cost-of-Living Differential.**—

(1) **In General.**—For purposes of this section, the term "qualified cost-of-living differential" means a reasonable amount determined under

tables (or under another method) prescribed by the Secretary establishing the amount (if any) by which the general cost of living in the foreign place in which the individual's tax home is located exceeds the general cost of living for the metropolitan area in the continental United States (excluding Alaska) having the highest general cost of living. The tables (or other methods) so prescribed shall be revised at least once during each calendar year . . .

(e) Qualified Housing Expenses.–

(1) In General.–For purposes of this section, the term "qualified housing expenses" means the excess of–

(A) the individual's housing expenses, over

(B) the individual's base housing amount.

(2) Housing Expenses.–

(A) In General.–For purposes of paragraph (1), the term "housing expenses" means the reasonable expenses paid or incurred during the taxable year by or on behalf of the individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country . . .

(3) Base Housing Amount.–For purposes of paragraph (1) -

(A) In General.–The term "base housing amount" means 20 percent of the excess of–

(i) the individual's earned income (reduced by the deductions properly allocable to or char-

geable against such earned income (other than the deduction allowed by this section), over

(ii) the sum of–

(I) The housing expenses taken into account under paragraph (1) (A) of this subsection,

(II) the qualified cost-of-living differential,

(III) the qualified school expenses,

(IV) the qualified home leave travel expenses, and

(V) the qualified hardship area deduction

. . .

(f) Qualified Schooling Expenses.–

(1) In General.–For purposes of this section, the term "qualified schooling expenses" means the reasonable schooling expenses paid or incurred by or on behalf of the individual during the taxable year for the education of each dependent of the individual at the elementary or secondary level. For purposes of the preceding sentence, the elementary or secondary level means education which is the equivalent of education from the kindergarten through the 12th grade in a United States-type school . . .

(g) Qualified Home Leave Travel Expenses.–

(1) In General.–For purposes of this section, the term "qualified home leave travel expenses" means the reasonable amounts paid or incurred

by or on behalf of an individual for the transportation of such individual, his spouse, and each dependent from the location of the individual's tax home outside the United States to–

(A) the individual's present (or, if none, most recent) principal residence in the United States, or

(B) if subparagraph (A) does not apply to the individual, the nearest port of entry in the continental United States (excluding Alaska) and return.

(2) **One Trip Per 12-Month Period Abroad.**– Amounts may be taken into account under paragraph (4) of subsection (b) only with respect to one round trip per person for each continuous period of 12 months for which the individual's tax home is in a foreign country.

(h) **Qualified Hardship Area Deduction.**–

(1) **In General.**–For purposes of this section, the term "qualified hardship area deduction" means an amount computed on a daily basis at an annual rate of $5,000 for days during which the individual's tax home is in a hardship area.

(2) **Hardship Area Defined.**–For purposes of this section, the term "hardship area" means any foreign place designated by the Secretary of State as a hardship post where extraordinarily difficult living conditions, notably unhealthful conditions, or excessive physical hardships exist and for which a post differential of 15

percent or more-

(A) is provided under section 5925 of title 5, United States Code, or

(B) would be so provided if officers and employees of the Government of the United States were present at that place.

(i) Special Rules Where Individual Maintains Separate Household For Spouse and Dependents . . .

(j) Other Definitions and Special Rules . . .

(k) Certain Double Benefits Disallowed . . .

(l) Application With Section 911.–An individual shall not be allowed the deduction allowed by subsection (a) for any taxable year with respect to which he elects the exclusion provided in section 911.

(m) Regulations.–The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of this section, including regulations providing rules–

(l) for cases where a husband and wife each have earned income from sources outside the United States, and

(2) for married individuals filing separate returns.